paper cough sweets" shows clearly that to these customers the get up of the red coloured wrapper had become associated or identified with the appellants' goods. An attempt was made by the respondents to show that the red coloured wrappers were common to the trade. This attempt failed, as it was clear on the evidence that prior to 1953 no wrapper similar to that used on the appellants' sweets had ever been used on sweets whether medicated or otherwise in Singapore, and from 1953—1958 the appellants' sweets were the only sweets so wrapped which were sold in Singapore.

The second matter which in order to succeed the plaintiffs must establish is that in the circumstances there is a probability of confusion between the goods of the plaintiffs and of the defendants. This again is a question of fact. Important evidence was given for the plaintiffs and accepted by the trial judge that some retailers in Singapore displayed both "Hacks" and "Pecto" sweets in the same jar. Further evidence was given by a witness who visited six shops in Singapore. He asked for "Hacks" sweets and he was on each occasion given "Hacks" or "Pecto" sweets mixed together. It may well be that to an English speaking customer the word "Pecto" on the respondents' sweets would be sufficient to distinguish their sweets from those of the appellants. But according to the trial judge the majority of purchasers of these sweets are unable to read English and accordingly "Pecto" is not sufficient to distinguish the respondents' goods.

As the trial judge succinctly expresses it, "so far as non-English speaking members of the public are concerned the get up is all important in this case, while the name is insignificant". The courts will have regard to conditions existing in foreign markets and to the type of customers (*Johnston* v. *Orr Ewing* [2]).

Upon this evidence the trial judge found that the similarity of the get up of "Pecto" sweets and "Hacks" sweets is such as to be calculated to deceive. No case of actual deception was proved, but this is not necessary. In their Lordships' view this finding of the trial judge was fully justified on the evidence.

Upon these findings the trial judge made an order restraining the respondents from offering for sale or otherwise dealing with medicated cough sweets not manufactured by the appellants and wrapped with the "Pecto" wrapper without clearly distinguishing such wrapper from the appellants' wrapper.

The Court of Appeal (Buttrose and Ambrose JJ., Wee Chong Jin J. dissenting) reversed the decision of Tan Ah Tah J. The majority of the Court of Appeal held that there was nothing in the wrapper which constituted a peculiar — a novel or capricious design — as a distinguishing feature of the sweet. In their Lordships' view it is not necessary that the design should be novel, provided the get up is distinctive of the appellants' goods and has been identified with them. The majority also thought that the appellants were claiming a right to a monopoly of coloured paper wrappers, but this is not the order which the appellants were granted. Moreover, in their Lordships' view the Court of Appeal fell into error in rejecting as inadmissible evidence which had rightly been accepted by the trial judge, and upon this view they held that the appellants had failed to prove their case of passing off.

Their Lordships express their entire satisfaction with the opinion of Tan Ah Tah J. and agree with his conclusion. They prefer the dissenting judgment of Wee Chong Jin J. to the opinions of the majority of the Court of Appeal.

For these reasons their Lordships will report to the Head of Malaysia their opinion that the order of the Court of Appeal of the State of Singapore, dated 19th January 1962 should be set aside with costs, and the order of Tan Ah Tah J., dated 11th August 1961 restored, and that the respondents should pay the costs of the appeal.

Appeal allowed.

Solicitors: *Linklaters & Paine; Coward, Chance & Co.*

PUBLIC PROSECUTOR v. ANTHONY WEE BOON CHYE & ANOR.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Wylie C.J. (Borneo)) November 16, 1964]

[Singapore — Special Civil Case No. 1 of 1964]

Extradition — Fugitive Offenders Act, 1881, ss. 13-19, Part II — Order-in-Council of 2nd January, 1918 — Whether applicable to Singapore after incorporation of Singapore in Malaysia — Continuance of existing laws — Constitution of State of Singapore, Art. 105(1) — Malaysia Act, 1963, s 73 — U.K. Malaysia Act, 1963, s. 3.

Constitutional law — Existing laws — Incorporation of State in Malaysia — Extradition.

By a special case stated by a judge of the High Court in Singapore the following question was referred to the Federal Court "whether in view of the incorporation of the State of Singapore in the independent State of Malaysia the Fugitive Offenders Act, 1881, and in particular Part II thereof is applicable in Singapore".

Held: the Order-in-Council of 1918 and sections 13 to 19 of the Fugitive Offenders Act, 1881, are still part of the law of Singapore in relation to Hongkong notwithstanding the incorporation of Singapore in Malaysia.

Per Thomson L.P.: It would seem clearly to follow as a matter of pure construction that the Order-in-Council of 1918 and sections 13 to 19 of the Fugitive Offenders Act 1881 as read together are part of the "present law" of the State of Singapore and as such are still in force; and that there is nothing in that law which conflicts either

with the Constitution or the sovereign status of Malaysia.

Per Wylie C.J.: By virtue of section 3 of the United Kingdom Malaysia Act, 1963, the Fugitive Offenders Act and the Order-in-Council of 1918 will until provision to the contrary is made by a competent authority, have the same operation in relation to persons and things belonging to or connected with Singapore as if Singapore had not joined the Federation and Her Britannic Majesty's sovereignty and jurisdiction had not been relinquished.

Cases referred to:—

(1) *State of Madras* v. *Menon* A.I.R. 1951 S.C. 517.

(2) *In re Arton* [1896] 1 Q.B. 108, 111.

(3) *Metropolitan Police Commissioner* v. *Hammond* [1964] 2 All E.R. 772; [1964] 3 W.L.R. 1.

(4) *Re Gleish* (1879) O.B. & F. 39.

(5) *Re Naranjan Singh* [1961] 2 All E.R. 565.

(6) *Gohoho* v. *Guinea Press Ltd.* [1963] 1 Q.B. 948 at p. 955.

(7) *State of Kelantan* v. *Federation of Malaya and Tenku Abdul Rahman Putra Al-Haj* [1963] M.L.J. 355.

(8) *Ibralebbe* v. *Reg.* [1964] 1 All E.R. 251.

FEDERAL COURT.

Francis T. Seow (Senior Crown Counsel) for the appellant.

David Marshall and *J. B. Jeyaratnam* for the respondents.

Cur. Adv. Vult.

Thomson L.P.: This is a special case stated by a judge of the High Court in Singapore.

The matter arises in this way. On 24th April, 1964, a warrant was issued by a magistrate in the British Colony of Hong Kong for the apprehension of a man named Anthony Wee and a woman named Agnes Wee (whom I shall call the accused) on a charge of committing an offence under section 9(a) of the Forgery Ordinance of the Colony punishable with 14 years' imprisonment.

At the time of the issue of the warrant the accused, as to whose national status we have no information, were in the State of Singapore and so the Hong Kong police forwarded the warrant to the police in Singapore who on 12th June, 1964, obtained from a Singapore magistrate a provisional warrant for the apprehension of the accused. In due course the accused were arrested and brought before a district judge with a view to the Hong Kong warrant being endorsed and an order made for the return of the accused to Hong Kong under the provisions of Part II of the Fugitive Offenders Act, 1881, as applied to Singapore and Hong Kong by Her Britannic Majesty's Order-in-Council dated 2nd January, 1918. The district judge refused to endorse the warrant on the ground that the provisions of Part II of the United Kingdom Fugitive Offenders Act, 1881, were no longer in force in Singapore by reason of the present position of that State as part of the sovereign State of Malaysia. He did so by reason of the decision of the Supreme Court of India in the case of *State of Madras* v. *Menon* [1] which will be discussed later.

Against that decision the Attorney-General appealed and on the appeal coming on for hearing in the High Court the judge was of the opinion that a constitutional question was involved. He accordingly stayed the proceedings before him and stated a special case for the opinion of this court under the provisions of section 48 of the Judicature Act, 1964.*

Before us there was some discussion as to the exact terms of the question to which the answer of this court was requested but in the event counsel agreed that the question intended to be asked was as follows:—

"Whether in view of the incorporation of the State of Singapore in the independent State of Malaysia the Fugitive Offenders Act, 1881, and in particular Part II thereof, is applicable in Singapore."

Extradition, that is to say the handing over by one State of persons who are within its territorial boundaries to another State so that they may answer for criminal offences alleged to have been committed there, is a comparatively modern conception of law which has been developed to meet the demands of comity between nations in the conditions of the modern world. As was said by Lord Russell of Killowen C.J. in the case of *In re Arton*:—[2]

"The law of extradition is, without doubt, founded upon the broad principle that it is to the interest of civilised communities that crimes, acknowledged to be such, should not go unpunished, and it is part of the comity of nations that one state should afford to another every assistance towards bringing persons guilty of such crimes to justice."

In the present case we need not consider the various statutory arrangements regarding the surrender of accused persons between the various parts of the United Kingdom, though it is of interest to observe that as between England and the Irish Free State the arrangements which existed before the latter became independent are still to some extent in force (see *Metropolitan Police Commissioner* v. *Hammond* [3]). Nor is it necessary to examine the arrangements for giving effect on a reciprocal basis to extradition treaties between the United Kingdom and foreign powers embodied in the Extradition Acts 1870 — 1935, arrangements which may be extended by Order-in-Council to portions of Her Britannic Majesty's Dominions other than the United Kingdom.

* This section has been amended since the hearing of this case by Act No: 35 of 1964.

What does concern us here is the arrangements relating to the surrender of fugitive offenders between the various parts of Her Britannic Majesty's Dominions (using the word in its pre-1931 sense) in general and, in particular these arrangements in relation to Singapore.

In 1843 the Fugitive Offenders Act of that year had made provision for the surrender of fugitive accused persons between the United Kingdom and what were then known as the Colonies. The provisions of the 1843 Act proved to be unsatisfactory (see the New Zealand case of *Re Gleich* [4]) and in 1881 Parliament enacted the present Fugitive Offenders Act which I shall call "the 1881 Act".

Part I of that Act contains general provisions similar to those of the Extradition Acts for the surrender of accused persons as between the various parts of Her Britannic Majesty's Dominions. It only applies in relation to certain specified offences (sections 2 and 9); there must be a preliminary enquiry by a magistrate to ensure that there is a *prima facie* case against the accused person (section 5); and there has to be a fifteen-day interval before the actual surrender of the alleged offender (section 6).

Part II provides for a shorter and more summary procedure in relation to certain British possessions which in effect includes places outwith Her Majesty's Dominions in which Her Majesty has jurisdiction (section 36). Section 12 provides that Part II shall apply, and shall apply only, to such groups of British possessions to which "by reason of their contiguity or otherwise" it may seem expedient to Her Majesty to apply the same. It provides that Her Majesty may from time to time by Order-in-Council direct that Part II shall apply to any such group of British possessions mentioned in such Order and when this has been done the procedure contained in Part II can be followed.

Briefly, that procedure is that where in a British possession within a group to which Part II has been applied a warrant has been issued for the apprehension of a person accused of an offence punishable in that possession and such person is in another possession within the group, then a magistrate in the possession in which the alleged offender is, if satisfied that the warrant was issued by a person having lawful authority to issue it, may endorse it, and the party named in the warrant may then be arrested and brought before the endorsing magistrate (section 13). If the endorsing magistrate is satisfied that the warrant is duly authenticated and was issued by a person having lawful authority to issue the same and that the prisoner is the person named in the warrant he may order such prisoner to be returned to the British possession in which the warrant was issued. There is no requirement to hold a preliminary enquiry or anything of the sort. It is, however, provided that where it is made to appear to a magistrate or to a superior court that by reason of the trivial nature of the case or by reason of the application for the return of a prisoner not being made in good faith in the interests of justice or otherwise it would, having regard to the distance, to the facilities of communication and to all the circumstances of the case, be unjust or oppressive or too severe a punishment to return the prisoner the court may discharge him or postpone his surrender (section 19). In England it has been held that this provision is to be given a wide construction (see *Re Naranjan Singh* [5]). The Act applies to persons regardless of their national status.

In the present case the most important point to be observed regarding Part II of the 1881 Act is that, apart from giving Her Majesty power to make Orders-in-Council, its provisions were a dead, or at any rate dormant, letter until at least one Order-in-Council was made. In particular, as regards any individual part of Her Majesty's dominions in relation to any other part, Part II had no effect until an Order-in-Council was made under section 12 constituting the two places (with or without the addition of other places) to be a group for the purposes of the Act and applying the provisions of Part II, that is to say sections 13 to 19, to such group. When that was done the Order-in-Council and sections 13 to 19 became part of the local law of each of the places mentioned in the Order-in-Council. In this connection, however, it is to be observed, with some emphasis, that in ascertaining the local law in any one of such places the appropriate Order-in-Council and sections 13 to 19 of the Act must be read together for without the Order-in-Council sections 13 to 19 are meaningless. This may be thus illustrated. If an Order-in-Council were made in respect of territories A and B then a magistrate in territory A who was asked to back a warrant from B would not know whether or not he had power to back such a warrant without first referring to the Order-in-Council and ascertaining that both A and B were named therein.

It is true, of course, that instead of enacting the 1881 Act the United Kingdom Parliament could have followed a different course. As and when such a course became desirable it could have enacted a separate Act in respect of a group of places to be named in the Act itself. If this had been done then each such Act would have become part of the local law of each of the places named in it. But that was not what was done and the actual position is that in every

case it is the Order-in-Council and sections 13 to 19 of the Act read together that are part of the local law of each of the places named in an Order-in-Council made under the Act.

There is no need to relate the whole history of the application of Part II of the 1881 Act to Singapore. It will suffice to commence with the Order-in-Council of 2nd January, 1918. In brief that Order-in-Council applied Part II to a group of territories all of which were in 1918 British possessions within the meaning of the Act. These originally were British India, Ceylon, Hong Kong, the Straits Settlements, the Federated Malay States, Johore, Kedah and Perlis, Kelantan, Trengganu, Brunei, North Borneo and Sarawak. That list of territories has been amended from time to time to meet the exigencies of changes in the status of the various territories involved but, apart from the addition of what was then British Burma, the geographical areas affected have always remained the same and the list now includes Singapore *eo nomine* and Hong Kong. For the sake of simplicity I shall refer to this Order-in-Council of 2nd January, 1918, as amended, as the "Singapore-Hong Kong Order".

Now, there can be no question that on 15th September, 1963, that is the last day on which the State of Singapore was part of Her Majesty's Dominions and the day before it became part of Malaysia, the Singapore-Hong Kong Order and sections 13 to 19 of the 1881 Act were part of the law of Singapore. Thus a warrant issued in Hong Kong could be executed in Singapore after being endorsed by a Singapore magistrate and the offender returned to Hong Kong. Such also *mutatis mutandis* was (and still is) the law in Hong Kong in relation to Singapore: (see section 3 of the United Kingdom Malaysia Act, 1963; and *Gohoho* v. *Guinea Press Ltd.*[6]).

The Singapore-Hong Kong Order has not been revoked by Her Majesty. If, therefore, that Order and the provisions of sections 13 to 19 of the 1881 Act are no longer part of the law of Singapore it must be by reason of the change that took place in the constitutional and international status of the State of Singapore on 16th September, 1963, when it ceased to be part of Her Britannic Majesty's Dominions and became part of the independent State the name of which on the same date became Malaysia.

Here it is necessary in the first place to examine the relevant portions of the various instruments relating to that change of status.

The new status came about by virtue of the (Federation of Malaya) Malaysia Act, 1963, and of the (United Kingdom) Malaysia Act, 1963. Immediately previously, by reason of an Order-in-Council by Her Britannic Majesty, dated 29th August, 1963, (S.R.O. No: 1493 of 1963) made under section 1(2) of the latter Act, a new State Constitution came into existence for the State of Singapore. I have expressed my own views as to the nature of what happened on 16th September, 1963, in the case of *State of Kelantan* v. *Federation of Malaya and Tunku Abdul Rahman Putra Al-Haj.*[7] and I would pause here to make it clear that nothing I am about to say here is to be construed as in any way detracting from anything I said in that case.

Article 105(1) of the new Singapore Constitution reads as follows:—

> "Subject to the provisions of this Article and to any provision made on or after Malaysia Day by or under Federal law or State law, all existing laws shall continue in force on and after the coming into operation of this Constitution....but all such laws shall, subject to the provisions of this Article, be construed as from the coming into operation of this Constitution with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution and the Malaysia Act."

And by Article 91 an "existing law" is defined as "any law having effect as part of the law of the State immediately before the coming into operation" of the new Constitution.

Now, that definition of an "existing law" clearly includes the Singapore-Hong Kong Order. Prior to Malaysia Day the whole of the statute law in Singapore came indirectly or directly from the British Crown. There was the great body of what were called Ordinances enacted in accordance with the provisions of the constitutional instruments which were in force from time to time and which themselves came from the British Crown. But until Malaysia Day Her Britannic Majesty never lost or relinquished her powers, some of them prerogative some of them statutory, to legislate for Singapore directly by way of Order-in-Council and immediately prior to Malaysia Day there was a body of legislation enacted in this way which, though much less in volume than the Ordinances, was nevertheless not unimportant. Included in that body of legislation was the Singapore-Hong Kong Order.

Passing now to the (Federation of Malaya) Malaysia Act, the relevant provisions of that Act are to be found in section 73, which by article 159A of the Federal Constitution is declared to have effect as if embodied in the Federal Constitution. Sub-section (1) provides that all present laws, that is to say (sub-section (5)) all laws "passed or made" before Malaysia Day other than the Constitutions of the Federation or of the various states, shall have effect on or after Malaysia Day "according to their tenor, and be construed as if this Act had not been passed:". Sub-section (3) provides *quoad* Singapore that on and after Malaysia Day the

present laws of that State are to be treated as federal laws in so far as they are laws which could not be passed after Malaysia Day by the State Legislature and otherwise as State laws. By reason of article 74 and paragraph 1(e) of List I in the Ninth Schedule of the Federal Constitution laws relating to extradition and fugitive offenders are not State laws but Federal laws.

On article 105 of the Singapore Constitution and section 73 of the Malaysia Act it would then seem clearly to follow as a matter of pure construction that the Singapore-Hong Kong Order-in-Council and section 13 to 19 of the 1881 Act as read together are part of the "present law" of the State of Singapore and as such are still in force.

It has, however, been argued that the question goes beyond one of pure construction and that there is such an inconsistency between the terms of that law and the Constitution, which by article 4(1) is declared to be "the supreme law of the Federation" and which is the Constitution of a sovereign independent State, as completely to destroy its validity, or at least as so completely to deprive any available interpretation of its terms of effective meaning so as to render it for all practical purposes a nullity.

There would seem to be little substance in this argument.

Nothing now turns on the expression "British Possession". On and from Malaysia Day the power of Her Britannic Majesty to make laws having effect in Singapore has been relinquished by reason of section 1 of the United Kingdom Malaysia Act, 1963. There is no longer, therefore, any power in Her Majesty to vary the Singapore-Hong Kong Order. And therefore so long as that Order stands and is neither amended nor revoked by Parliament it is "frozen" so to speak and in particular the expression "British Possession" where it occurs in sections 13 to 19 is, as it were, drained of any content implying any political relationship between the United Kingdom and Singapore; so far as concerns Singapore it is not a political but a geographical expression. The "law", that is the Singapore-Hong Kong Order and sections 13 to 19 read together, is simply one which enables persons in Singapore in certain circumstances to be sent out of Singapore to Hong Kong for trial for offences alleged to have been committed in Hong Kong.

Thus considered there is nothing in that law which conflicts either with the Constitution nor the sovereign status of Malaysia.

Once it is accepted that as a matter of construction the law is in terms a law which was continued in existence after Malaysia Day and that there is nothing to prevent its terms being interpreted in a way consistent with the Constitution there only remains the question of whether its substance is in any way repugnant to any of the provisions of the Federal Constitution. That is a question which can be best answered by applying the test of whether in the event of Parliament enacting a similar law tomorrow it would for any reason be void.

Applying that test, it is clear that there is nothing in the Constitution that would justify any answer but "no" to the question posed by it.

Article 74 of the Constitution provides that Parliament may make laws with respect to any of the matters enumerated in the First List in the Ninth Schedule and, as has been said, these include extradition and fugitive offenders. If in exercise of that power Parliament were to pass an Act in terms which were exactly the same as those of sections 13 to 19 of the 1881 Act except for the substitution for the expression "British Possession" some such expression as "territory whose law makes similar provision for the return of persons alleged to have committed offences in Malaysia" how could it be said that there was anything in such a law inconsistent with the Constitution? The words "Her Majesty" would be read as referring not to Her Britannic Majesty but to the Yang di-Pertuan Agong so there would be no question of infringement of sovereignty. There could be no question of inconsistency with article 5 (liberty of the person) for a person deprived of his personal liberty under such a law would be so deprived in accordance with law. Nor could there be any question of inconsistency with article 8 (equality) for the law would apply equally to all persons alleged to have committed offences to which it applied. Nor would there be any question of ouster of the judicial power as vested in the courts for there would be nothing to prevent any person affected having recourse to the courts either as an appellant or as a suitor for a prerogative writ.

As regards whether such a law was fundamentally inconsistent with the very existence of national sovereignty it may well be that arguments might be advanced against the making of such a law. It might be argued that the safeguards embodied in it were inadequate and left too much to the discretion of another power and that these should include something of the nature of a preliminary judicial enquiry. It might be argued that the question of what states should be included in the proposed arrangements should be decided by Parliament and not by the Government. It might be said that the love of Malaysia for even her erring children was such that it would be intolerable that she should do anything to facilitate their correction by an alien power even for their sins committed abroad.

On the other hand it might be argued that it was of paramount importance to prevent this country becoming a den of unconvicted thieves.

All these arguments, and no doubt there might be many others, may or may not have substance. But they are arguments to be addressed to Parliament and not to the courts. The courts, when their assistance is invoked, must be vigilant to ensure that the rights of a suitor are not affected by any trespass by the legislature beyond the limits placed on its powers by the Constitution, though it may well be that those limits are wider than is generally happened. But the courts must be equally vigilant that they themselves do not trespass the limits set to their powers by the Constitution.

In the present case many of the arguments which have been addressed to Themis are more appropriate for the consideration of Demos and must accordingly be disregarded here. And in that connection it may be added (though such a consideration is, of course, irrelevant) that it has at all times been open to Parliament to amend this, or indeed any other, law that has survived from the days before independence but that in the case of this particular law Parliament has evinced no sign of disapproval.

Before departing from the case something should be said of the Indian case of *State of Madras* v. *Menon, supra,* for, although not binding on us, any judgment of the Supreme Court of India must always be regarded as of very great persuasive value.

In that case a warrant had been issued in Singapore at some time in 1952 for the apprehension of a Mr. and Mrs. Menon, then in India, for offences alleged to have been committed in Singapore and it was forwarded to India for endorsement under section 14 of the 1881 Act as applied to India and Singapore by the Order-in-Council of 1918. The Presidency Magistrate of Madras (where the Menons were) had doubts as to whether the 1881 Act applied to India after 26th January, 1950, when India became a sovereign Democratic Republic, and he referred the question to the High Court of Madras which held that in India section 14 of the Act was void and unenforceable against Mr. and Mrs. Menon. Against that decision the State of Madras (with the support of the Indian Government) appealed.

The Supreme Court after a detailed examination of the Act and the relevant provisions of the Indian Constitution said that under the Act and the Order-in-Council certain British possessions which were contiguous to one another and between whom there was frequent intercommunication were treated "as one integrated territory" and a summary procedure was adopted for the purpose of extraditing persons who had committed offences in these integrated territories. They then continued (at p. 519):—

> "The situation completely changed when India became a Sovereign Democratic Republic. After the achievement of independence and the coming into force of the new Constitution by no stretch of imagination could India be described as a British possession and it could not be grouped by an Order in Council amongst those possessions. Truly speaking, it became a foreign territory so far as other British possessions are concerned and the extradition of persons taking asylum in India, having committed offences in British possessions, could only be dealt with by an arrangement between the Sovereign Democratic Republic of India and the British Government and given effect to by appropriate legislation."

Later it was said:—

> "Article 372 of the Constitution cannot save this law because the grouping is repugnant to the conception of a Sovereign Democratic Republic. The political background and shape of things when Part II of the Fugitive Offenders Act, 1881, was enacted and envisaged by that Act having completely changed, it is not possible without radical legislative changes to adapt that Act to the changed conditions."

It is clear from a careful perusal of this judgment that the Supreme Court was not invited to consider the argument that once there was in existence an Order-in-Council purporting to apply Part II of the 1881 Act to specified territories then, so long as the Order-in-Council existed, the effect was to substitute these territories for the expression "British Possession" and so deprive that expression of any what might be called political significance. In the circumstances, though with much regret, I am compelled to differ from the Indian court.

For the reasons, then, stated earlier in this judgment I would answer the question in the case by saying that the Order-in-Council of 2nd January, 1918, and sections 13 to 19 of the Fugitive Offenders Act, 1881, are still part of the law of Singapore in relation to the British possession of Hong Kong. I express the limitation contained in that answer to Singapore and Hong Kong not by reason of any doubts I entertain regarding the position as between any other territories mentioned in the Order-in-Council but simply and solely because it would be wrong for this court to go beyond the limits of the actual litigation in the course of which the case has been stated.

Barakbah C.J. (Malaya) concurred.

Wylie C.J. (Borneo): The issue in this appeal is whether Part II of the Fugitive Offenders Act, 1881, remains in force as between Hong Kong and Singapore, notwithstanding the changes effected by the various legislative instruments enacted to make Singapore a state of the independent federation now known as Malaysia. The history of the application of Part II to Singapore and other territories in this part of the world is, so far as relevant, set out in the

judgment delivered by the Lord President and there is no need for me to repeat it. It is clear that, as between Singapore and Hong Kong, Part II was in force immediately prior to the coming into operation of the various constitutional enactments providing for Singapore to become part of Malaysia. It is equally clear that there is no provision in these enactments which, by specific reference to the Fugitive Offenders Act, 1881, or by any other means, expressly repeals the application of Part II as between Singapore and Hong Kong.

On behalf of the respondent, however, it was argued that Part II is no longer in force in Singapore and, as I understand the submission, this was put forward on two grounds, both based on the fact that one effect of the constitutional changes is that Singapore ceased to be a British possession. One ground was that there is a repeal by necessary implication contained in the new constitutional enactments themselves and the other, partly related to the first ground, was that the continued operation of Part II is not consistent with the changed constitutional position in that Singapore is now part of an independent federation and that it is not consistent with the status of an independent country that processes of a subordinate court of another country should have effect in the first country in the manner provided for in Part II.

There is no doubt that Singapore ceased to be a British possession on the day that Malaysia came into existence. The British Parliament enacted the Malaysia Act, 1963, which came into effect on July 31st of that year and sub-section (1) of section 1 provides as follows:—

"For the purpose of enabling North Borneo, Sarawak and Singapore (in this Act referred to as 'the new States') to federate with the existing States of the Federation of Malaya (in this Act referred to as 'the Federation'), the Federation thereafter being called Malaysia, on the day on which the new States are federated as aforesaid (in this Act referred to as 'the appointed day') Her Majesty's sovereignty and jurisdiction in respect of the new States shall be relinquished so as to vest in the manner agreed between the United Kingdom of Great British and Northern Ireland, the Federation and the new States."

Reference to the agreement between the various governments makes it clear that all of Her Britannic Majesty's sovereignty and jurisdiction in respect of the new States has been relinquished and has vested in the Federation of Malaysia with a distribution of powers between federal and State institutions in the manner set out in the agreement. It follows that Singapore is no longer a British possession.

In support of the ground that there has been an implied repeal of the Order-in-Council of 1918 applying Part II of the Fugitive Offenders Act, 1881, to Singapore, reliance was placed on the provisions of sub-section (4) of section 73 of the Malaysia Act of the Federation and of article 105(1) of the present Singapore State Constitution, which it was submitted resulted in an implied repeal of the Order-in-Council of 1918, having regard to the language of Part II of the Fugitive Offenders Act, 1881, and of the Order-in-Council itself.

Considering first the effect of section 73(4) of the Malaysia Act of the Federation, reliance was placed on that part of this sub-section which provides that the earlier provisions of that section —

"shall not validate or give effect to any provision contained in the present law of the Federation which is inconsistent with the Constitution."

Sub-section (1) provides, subject to certain qualifications, that "all present laws shall, on and after Malaysia Day, have effect according to their tenor, and be construed as if this Act had not been passed."

It was argued that the phrase "the present law of the Federation" in sub-section (4) must, by application of the principle that the singular includes the plural, be taken to mean the same as the expression "all present laws" used in sub-section (1). The expression "present laws" is defined in sub-section (5) as follows:—

"In this Part of this Act 'present laws' means the laws of the Federation, of each of the Borneo States, and of Singapore passed or made before Malaysia Day, but does not include the Constitution of the Federation or any of those States or this Act."

It is clear from the definition that the phrase "laws of the Federation" is used therein to distinguish the laws of the Federation of Malaya (i.e. the laws of the Federation before Malaysia Day) from the laws of the new States. The phrase "present law of the Federation" is also used twice in sub-section (2) in a context which makes it clear beyond all doubt that the phrase refers only to laws in force in the original States. I see no reason for concluding that Parliament used the same expression in sub-section (4) in any different sense and especially as meaning something for which a different expression has been specifically provided in the same section by means of an interpretation provision. Consequently, section 73(4) is not relevant to the present issue.

Reliance was also placed by the respondent on clause (1) of article 105 of the Singapore Constitution which (so far as relevant) reads —

"Subject to the provisions of this Article and to any provision made on or after Malaysia Day by or under Federal law or State law, all existing laws shall continue in force on and after the coming into operation of this Constitution....but all such laws shall, subject to the provisions of this Article, be construed as from the coming into operation of this Constitution with such modifications, adaptations, qualifications and exceptions

as may be necessary to bring them into conformity with this Constitution and the Malaysia Act."

It was argued that clause (1) of article 105 having provided that all existing laws are now to be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the new Constitution and the Malaysia Act, the Order-in-Council of 1918 and the Act of 1881, in its application to Singapore, must now be construed subject to the qualification that Singapore is no longer a British possession and therefore these enactments cannot apply to Singapore because they can apply only to a British possession. This is not exactly the manner in which the submission was made, but it is, as I understand it, the substance of the submission.

The submission was supported by reference to the language of the Act of 1881 and of the Order-in-Council which it was contended led to the view that the Act and any Order-in-Council made under it must cease to have effect in a territory which ceased to be a British possession.

So far as the Order-in-Council of 1918 is concerned, the answer is short. The relevant operative part of that Order-in-Council provides merely that "Part II of the Fugitive Offenders Act, 1881, shall apply to the group of British possessions and Protected States hereunder mentioned." There follows a list of territories by name which are to form the group and the Straits Settlements (which included Singapore) is one of the territories named. Although the power to extend Part II of the Act was limited to British possessions, there is nothing in the Order-in-Council to restrict its continuance after a territory ceased to be a British territory. The Order-in-Council merely made Part II part of the law of the territory. Consequently, I can find nothing in the language of the Order-in-Council which leads me to the conclusion that Part II of the Act ceased to have effect in Singapore for the reason that that State ceased to be a British possession.

Consideration of the provisions of the Act itself does lead to more difficulty. In my judgment, it is of importance that the Order-in-Council merely applies Part II to the various territories *simpliciter*. It does not purport to modify or adapt the language of the statute in any manner whatever. Consequently, what has become part of the existing law of Singapore by virtue of this Order-in-Council is Part II of the Act word for word as it was enacted in England.

It may be that, in questions of this kind, a distinction can be drawn between what may be loosely termed past events and future events, the latter referring to events happening after Singapore ceased to be a British possession. For instance, section 12 provides that "this part [i.e. Part II] of the Act shall apply only to those groups of British possessions to which....it may seem expedient to Her Majesty to apply the same." As I have said, once the Act has been applied, it becomes part of the law of the territory and it does not follow that it will cease to be part of that law merely because the territory ceases to be a British possession. As Her Britannic Majesty has relinquished all sovereignty and jurisdiction, and therefore all power to legislate in respect of Singapore, it follows that no further Orders-in-Council under this section can be made to have effect in Singapore.

Other sections, dealing with events in the future, raise more serious problems. The expression "British possession" has been expressly defined for the purposes of the Act in section 39 and, for present purposes, is defined as "any part of Her Majesty's dominions". The other sections in Part II contain a number of different expressions, such as "a British possession of a group to which this part of this Act applies", "another British possession of the same group", "the British possession in which the warrant was issued", and sometimes merely "British possession" or "possession". Having regard to the definition of "British possession" in section 39, the purpose of the legislation as compared with normal extradition process applicable in the case of a country that is not within the definition of "British possession" and the language and effect of the Order-in-Council of 1918 (which, as I have already said, merely makes this legislation in its original language part of the law of the territories in a group without any modification of its wording and, in particular, of the expression I have quoted) I should have considerable difficulty in arriving at the conclusion that Part II of the Act can continue to operate effectively in a territory which had ceased to be a British possession on the basis that these various expressions can be applied as if they were equivalent to some such expression as "a territory to which this part of this Act has been applied". Any attempt to apply the language of these sections literally once a territory has ceased to be a British possession leads to obvious difficulties, which appear to be insuperable. A position similar to that reached in *Metropolitan Police Commissioner* v. *Hammond* [3] may have arisen, if there has been no modification of the language of Part II.

The continued application of existing laws in Singapore is provided for in article 105(1) of the new Singapore Constitution. This Constitution was made by Order-in-Council enacted pursuant to sub-section (2) of section 1 of the Malaysia Act, 1963 of the United Kingdom. At

the date of enactment of this Act (31st July, 1963) the Parliament of the United Kingdom was the only legislature with unlimited authority to enact laws for Singapore. Sub-section (1) of section 1 provided for relinquishment of Her Britannic Majesty's sovereignty and jurisdiction on the appointed day (16th September, 1963) "so as to vest in the manner agreed between" the various governments. Part of that agreement was to the effect that the British Government should enact a new Constitution for Singapore in the terms in which the Constitution was later enacted under sub-section (2) so as to have effect immediately before the appointed day. Consequently, this Act and the new Constitution formed part of the existing laws of Singapore and were both enacted in pursuance of the agreement made between all the governments concerned. Article 105 of that Constitution is therefore the provision to be relied upon for the continuance of existing laws in Singapore.

Counsel for the respondents claimed that the effect of clause (1) of article 105 went further in the case of Part II by providing that existing laws should be construed subject to such qualifications and exceptions as may be necessary to bring them into conformity with the new constitutional position. This clause also provides for modifications and adaptations for the same purpose. No suitable modification or adaptation for this purpose was suggested during argument and I cannot suggest any. For, if my conclusion is sound that the true intention to be derived from the language used in Part II is that it is to operate only between different parts of Her Britannic Majesty's dominions, the modification rendered necessary is one as to the scope of the legislation and is rendered necessary not in order to bring it into conformity with the new constitutional arrangements, but to extend the scope of the legislation to processes and countries to which the legislation does not by its terms apply. To say that the Act is to continue to apply as if Singapore was still a British possession would be the very opposite to construing the Act in conformity with new constitutional arrangements providing for Singapore to cease to be a British possession. On this view, if the latter part of clause (1) of article 105 were at all applicable to the Act in its original form, it seems as if the only provision that would be applicable is that which provides that all existing laws are to be construed with such qualifications and exceptions as may be necessary to bring them into conformity with the new constitutional arrangements. For there would be a strong argument that the Act provides only for British possessions, Singapore has ceased to be a British possession by virtue of these new constitutional arrangements and therefore this enactment must be construed as excepted from existing laws in order to bring existing laws into conformity with the new constitutional situation. On this reasoning the Act would no longer be in force.

On behalf of the appellant, reliance for the view that Part II of the Fugitive Offenders Act is still in force in Singapore was placed on section 73(1) of the Malaysia Act of the Federation. This section provides that all present laws (which by definition set out in sub-section (5) include existing laws of Singapore) are to have effect after Malaysia Day according to their tenor and as if the Malaysia Act of the Federation had not been passed. However, the difficulties in this issue are not created by the enactment of the Federation Act and, in my opinion, are only increased by endeavouring to apply Part II of the Fugitive Offenders Act according to its tenor because of the difficulties already referred to arising from the constant use of the expression "British possession". Consequently, apart from certain other considerations to which I find it unnecessary to refer in this judgment, I do not obtain any assistance from this section. If it applied at all to this issue, it would lead me to one of the two conclusions that I consider article 105(1) of the Singapore Constitution may produce — namely, that Part II would be continued in existence, but would be unworkable.

The difficulties are created not by the consequences of any of the provisions of the Malaysia Act of the Federation, but by section 1(1) of the Malaysia Act of the United Kingdom, because it was in consequence of that enactment that Singapore ceased to be a British possession. If the effective operation of Part II is to be preserved, its operation must, having regard to the view I take of the effect thereon of Singapore ceasing to be a British possession, be in some way excepted from the consequences of this new position created by section 1(1).

In my judgment, this exception has been created by the provisions of section 3 of the Malaysia Act of the United Kingdom, which thus resolves the difficulties which have been raised by the foregoing considerations.

That section also deals with the operation of existing law and the relevant parts of that section are sub-sections (1) and (3) which read as follows:—

"(1) On and after the appointed day all law which, whether being a rule of law or a provision of an Act of Parliament or of any other enactment or instrument whatsoever, is in force on that day or has been passed or made before that day and comes into force thereafter, shall, unless and until provision to the contrary is made by Parliament or some other authority having power in that behalf, and save as otherwise provided by this Act, have the same operation in relation to the Federation to any of the States of the Federation, and to persons and

things belonging to or connected with the Federation or any of the States thereof, as it would have apart from this subsection if the new States had not become included in the Federation and section 1 of this Act had not been passed.

. . . . . .

(3) This section applies to law of or of any part of the United Kingdom, the Channel Islands and the Isle of Man and, in relation only to any enactment of the Parliament of the United Kingdom or any Order-in-Council made by virtue of any such enactment whereby any such enactment applies in relation to the Federation or any territory which will be comprised therein on and after the appointed day, to law of any other country or territory to which that enactment or Order extends."

Sub-section (3) falls for consideration first, as it defines the scope of the section. After setting out that the section extends to all the law of the United Kingdom, the Channel Islands and the Isle of Man, the sub-section goes on to provide that it shall also apply, in relation to any enactment of the Parliament of the United Kingdom or certain Orders-in-Council made by virtue of any of these enactments, to the law of any other country or territory to which that enactment or these Orders extend. This part of the sub-section can, of course, only have effect in countries or territories in respect of which the British Parliament has jurisdiction to legislate, but, subject to this limitation, it must have effect in all such countries and territories other than the United Kingdom, the Channel Islands and the Isle of Man, in respect of which provision has already been made in the earlier part of the sub-section extending to all their laws.

There is, of course, a corresponding provision contained in the Federation of Malaya Independence Act, 1957, of the United Kingdom, whereby authority was given to terminate British sovereignty and jurisdiction in respect of those States which originally formed the Federation. Section 4(1) of that Act provides that all existing law to which that section applies is to continue to apply, until other provision is made by the appropriate authority, in relation to the Federation or any part thereof, and to persons and things connected therewith, as if no agreement for termination of Her Britannic Majesty's sovereignty and jurisdiction had been concluded. Sub-section (4) provides that the section applies to —

"law which operates as law of, or of any part of, the United Kingdom, Southern Rhodesia, or any colony, protectorate or United Kingdom trust territory."

There are certain exceptions that are not relevant to the point under consideration. Applying the construction given to the expressions "colony" and "protectorate" by sub-section (5), it is clear that the section applied to the law of all the Malay States and Penang and Malacca (i.e. all the territories originally forming the Federation), until amended or repealed by the appropriate authority. It is only logical that, on this later occasion, when new States were joining the existing Federation, the United Kingdom Parliament should legislate for the operation of a corresponding provision in the new States joining the old States to which the original provision of 1957 applied. If these territories had not been included in the operation of sub-section (1), the same enactment or order might, until amended or repealed by the appropriate authority, have a different operation in these territories as compared with other territories to which sub-section (1) extended. The legislature which, at that time, was the legislature which had supreme authority to legislate for Singapore, has avoided this illogical hiatus by exercising its jurisdiction in a transitional provision to have effect only until provision to the contrary is made by the new authority having power in that behalf.

I am satisfied that the concluding words of sub-section (3) of section 3 of the Malaysia Act, 1963, apply to the law of any country or territory other than the United Kingdom, the Channel Islands and the Isle of Man in respect of which the United Kingdom Parliament had, at the date of the enactment of that Act (31st July, 1963) power to legislate. This obviously includes the new States of Singapore, Sarawak and Sabah, and, it should be observed, also Hong Kong.

The Fugitive Offenders Act, 1881, is an enactment of the Parliament of the United Kingdom extending, by virtue of the Order-in-Council of 1918, to all the States about to join the Federation and to Hong Kong. Consequently, sub-section (1) applies to the law of both Singapore and Hong Kong in relation to this Act and the Order-in-Council.

Turning back to sub-section (1), it follows that, on and after Malaysia Day, the Act and the Order-in-Council will, until provision to the contrary is made by a competent authority, have the same operation in relation to persons and things belonging to, or connected with, Singapore as it would have had if Singapore had not joined the Federation and section 1 of the Act had not been enacted — that is to say, as if Her Britannic Majesty's sovereignty and jurisdiction had not been relinquished.

It is also to be observed that section 3 would have the same effect in regard to the law of Hong Kong, assuming that there is no other law in operation in Hong Kong which would affect this position. It has not been suggested that there is any such law.

Earlier in this judgment, I observed that, apart from the effect of section 3 of the Malaysia Act, 1963, clause (1) of article 105 of the new Constitution of Singapore might, on one view

of the effect of the reference to exceptions in that clause, operate so as to exclude Part II of the Fugitive Offenders Act, 1881, from those existing laws which continued in force. There would then be a conflict between the provisions of section 3 and of that clause. Apart from the fact that the section deals with a particular category of existing legislation whereas the clause deals with all existing legislation, the Constitution is contained in a schedule to an Order-in-Council made under the Malaysia Act, 1963, and therefore, in the case of conflict with the Act, cannot be interpreted in a manner that would give it an effect that would override a specific provision in that Act. It follows, therefore, that the special class of legislation referred to in sub-section (3) cannot, in consequence of the operation of clause (1) of the Constitution, cease to operate in the manner provided for in sub-section (1), before provision is made to the contrary by competent authority.

I therefore conclude that there has been no repeal of Part II of the Fugitive Offenders Act, 1881, by necessary implication arising from the language of the various constitutional enactments. On the contrary, these enactments operate so as to continue in operation as part of the law of Singapore both the Order-in-Council of 1918 and Part II of the Act in the same manner as before Malaysia Day.

The other ground put forward was to the effect that, irrespective of the actual language of the constitutional instruments, it was inconsistent with the new constitutional status of Singapore as part of a sovereign and independent Malaysia that warrants issued by a subordinate court in a country outside Malaysia should be enforced in Singapore. Reliance for this proposition was placed on *State of Madras* v. *C. G. Menon.*[1] This is a decision of the Supreme Court of India and therefore, while not binding on this Court, warrants the greatest respect and consideration. The Lord President has set out in some detail the facts and basis of the decision in that case. It is clear that, notwithstanding the very wide terms in which, by article 372 of the Constitution of India, existing laws were continued in force when India ceased to be part of Her Majesty's dominions and became a republic, the Supreme Court of India reached the conclusion that Part II of the Fugitive Offenders Act, 1881, ceased to be part of the law of India when that country ceased to be part of Her Majesty's dominions. From one point of view, it could be said that article 372 is wider in its terms than article 105(1) of the Singapore Constitution, but there is no provision in article 372 for modified construction of existing laws and the court did not have under consideration any provision to the same effect as section 3 of the United Kingdom Malaysia Act, 1963, making specific provision for the manner in which, *inter alia,* the 1881 Act is to operate as part of the law of Singapore in the new conditions.

It is also to be observed that, in his judgment, the learned Chief Justice uses language which may well justify the conclusion that the court held that the Act no longer operated in India for much the same reasons as I have expressed earlier in this judgment which lead me to the conclusion that, even if the Act could still be said to be part of the existing laws, in the absence of the provision in the Malaysia Act, 1963 it would be unworkable, and to such an extent that the Act might well be said to be no longer in operation. For the Chief Justice expresses the view that it is not possible without radical legislative changes to adapt the act to the changed conditions and that other countries in the group might decline to reciprocate on the ground that India was no longer a British possession and therefore that the Act did not apply to India and that other countries were not bound in the absence of a new treaty to surrender their own nationals. Whether or not the court was holding that the Act was no longer in operation because without adaptation it was unworkable, it is clear that no such provision was considered as is contained in section 3 of the Malaysia Act, 1963.

While it is true as an abstract proposition that it is not in accordance with the sovereignty of an independent sovereign state that processes of foreign courts should be executed within that state, this proposition begs the real issue — which is that, subject to constitutional processes and limitations, sovereign status, loosely speaking, involves the right to do as the sovereign power wishes. If the sovereign power is willing that acts that would otherwise infringe on its sovereignty, may nevertheless be performed within the area of its jurisdiction, the very possession of sovereign power itself includes the power and the right to enact legislation, or to enter into treaties, whereby such acts are permitted. Under those conditions, the performance of the acts no longer infringes on the sovereignty of the power so legislating or consenting, for they are performed with the sovereign power's full consent and permission. In the case of Singapore forming part of Malaysia, full sovereignty has been attained with such legislation continuing as part of the existing law, but only until other provision is made by the new sovereign power. Consequently, execution of any process to which that legislation relates is carried out not in defiance, or as an infringement, of the sovereign status of Malaysia, but under and in

pursuance of the law in force in Malaysia permitting such execution. Malaysia may, in exercise of its sovereign power, bring an end to that state of affairs at any time it wishes to.

In the case of *Ibralebbe* v. *Reginam* [8] the Judicial Committee had to consider a somewhat similar proposition to the effect that the continuance of appeals to the Privy Council from Ceylon after that country attained independence, was inconsistent with that country's new status as an independent country. After reaching the conclusion that there was nothing in the constitutional instruments that involved a repeal of this right by necessary implication, the Judicial Committee end their consideration of the question of inconsistency with full sovereignty with these words at page 261:—

"....if it is recognised, as it must be, that the legislative competence of the Parliament of Ceylon includes power at any time. if it thinks right, to modify or terminate the Privy Council appeal from its courts, true independence is not in any way compromised by the continuance of that appeal, unless and until the sovereign legislative body decides to end it."

These observations are applicable also to the argument on inconsistency addressed to this court in these proceedings.

For these reasons, notwithstanding the decision in *Menon's* case, execution in Singapore of processes issued in a British possession pursuant to Part II of the 1881 Act and the Order-in-Council of 1918 is not at the present time an infringement of the sovereignty of Malaysia.

For the reasons I have given, I agree with the Lord President that the answer to the question referred to this Court is that the Order-in-Council of 1918 and sections 13 to 19 of the Fugitive Offenders Act, 1881, are still part of the law of Singapore in relation to Hong Kong, notwithstanding the incorporation of Singapore in the independent Federation of Malaysia.

Order accordingly.

Solicitors: *David Marshall.*

DARUS BIN AHMAD v. PUBLIC PROSECUTOR

[A.Cr.J. (Suffian J.) November 18, 1964]

[Kangar — Criminal Appeal No. 78 of 1964]

Local Authority — Erection of unauthorised building — Liability of owner — Meaning of "owner" — Chairman of company not liable — Town Boards Enactment, (Cap. 137), ss. 2, 91 and 93(ii).

The appellant, the chairman of a company was charged for erecting an unauthorised building. He pleaded guilty and was convicted. The land was held by the company on a temporary occupation licence. On appeal,

Held: the person liable for the erection of the unauthorised building under the Town Boards Enactment is the owner of the holding whereon the building was erected and as there was no admission or evidence that the appellant was the owner of the land, the conviction must be quashed.

Cases referred to:—

(1) *R.* v. *Alsagoff* [1950] M.L.J. 249.

(2) *Lim Beng Teck* v. *R.* [1957] M.L.J. 21.

(3) *Syed Ahmad Aljunied* v. *R.* (1962) 3 M.C. 312.

MAGISTRATE'S CRIMINAL APPEAL.

Ismi bin Ismail for the appellant.

Wan Ismail (Deputy Public Prosecutor) for the Public Prosecutor.

Suffian J.: An unauthorised building was put up on a piece of land within a Town Council area in Perlis contrary to section 91(i) of the F.M.S. Town Board Enactment which applies in Perlis. The land was held under a T.O.L. by the Sharikat Nelayan Kuala Perlis Bekerjasama? Tanggongan Berhad, of which Darus bin Ahmad (appellant) was chairman. The appellant was charged as "chairman" of the sharikat. At first he claimed trial but on the day fixed for the hearing he changed his mind and pleaded guilty, "admitting responsibility as chairman of the sharikat", whereupon he was convicted and fined $150 or one month's imprisonment and ordered to demolish the building. He appeals, his main ground of appeal being that the owner should have been charged, namely the sharikat the holder of the T.O.L., not him, and that therefore the proceedings against him were null and void. To this the Public Prosecutor replies that as the accused pleaded guilty there could be no appeal except against sentence only.

The law here is almost the same as in Singapore. Having studied *Alsagoff's case,* [1] *Lim Beng Teck's case* [2] and *Aljunied's case* [3] I am quite clear in my mind that despite the language of sub-section (i) of section 91 of the F.M.S. Town Boards Enactment, the person liable is not the person "who commenced the building operations", but, because of sub-section (ii) of section 93, "the owner of the holding whereon such building was erected" and no other, and the owner means (section 2) "the person for the time being receiving the rent of the holding in connection with which the word is used whether on his own account or as agent or trustee for any other person, or who would so receive the same if such holding were let to a tenant; and in any case in which such person cannot be found or makes default shall include also the occupier, if any, of such holding". Therefore to hold the appellant guilty there must be evidence or an admission that he was the owner of the land within the meaning of section 2, but despite an anxious search through the record of the proceedings I have failed to find in it such evidence or admission, he admitting responsibility only as chairman of the sharikat,